IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4192 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANESH SAHAKARI GRAH MANDLI LTD

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 4192 of 2000

NOTICE SERVED for Petitioner No. 1

MR SIRAJ GORI, Ld. AGP for Respondent No. 1

MR MC BHATT for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 07/10/2004

ORAL JUDGEMENT

Leave to amend the prayer clause by substituting

the area of the land as 155 sq. mtrs., in place of 2696 sq. mtrs.

2. Rule. Mr. Siraj Gori, learned AGP waives service of rule on behalf of respondent No.1, Mr.Raval, learned Counsel waives service of rule on behalf of respondent No.2/1 and 2/5. With the consent of the parties the matter is taken up for final hearing today.

3. The short facts of the case appear to be that the land of respondent Devjibhai Lallubhai Patel and others was declared as surplus land under Urban Lands (Ceiling and Regulations) Act (hereinafter referred to as the "ULC Act"), admeasuring 2851 sq. mtrs bearing Survey No.604/1 of Final Plot No.172. It is the case of the petitioner that the petitioner has paid full amount of Rs.38,48,805/= with the State Government and the possession of the land is also handed over to the petitioner. The petitioner wanted to develop the land for non-agricultural purpose and, therefore, the permission for such purpose is applied to the District Collector. It appears that in the mean time, the deceased Devjibhai Lallubhai Patel (hereinafter referred to the original respondent No.2) had preferred Civil Suit being No.817/1999 in the Court of Civil Judge (S.D.), Vadodara for asserting the right over the land in question. In the said Civil Suit the injunction was not granted and the authorities rejected the application for N.A. as per the order dated 4.10.1999, more particularly in view of the pendency of the Civil Suit. The petitioner carried the matter before this Court by preferring SCA No.8114/1999 and in the said petition ultimately after hearing both the sides this Court (Coram: A.R.Dave, J.) as per the order dated 6.12.1999 found that the concerned Authority has committed error in rejecting the application made by the petitioner for converting the land into non-agricultural purpose and, therefore, the order passed by the authority under Bombay Land Revenue Code (hereinafter referred to as the "Code") for rejecting the application was quashed and set aside and a direction was given to the authority under the Code to consider the matter afresh without considering the fact regarding the pendency of the civil suit No.817/1999. It appears that Dayabhai, brother of respondent No.2 also preferred SCA No.5752/1999 challenging the action of the authority for allotment of the land to the petitioner herein and this Court (Coram: R.K. Abichandani, J.) as per the order dated 13.1.2000 did not interfere with the matter in view of the pendency of the Civil Suit No.817/1999 before the Civil Court, Vadodara. It appears that the matter was also carried

further by the said Dayabhai before the LPA Bench being LPA No.15/2000 against the order dated 13.10.2000 passed by this Court in SCA No.5752/1999 and the said LPA as per the order dated 25.11.2000 was dismissed.

4. Pending the aforesaid proceedings the matter proceeded further so far as converting the land for non-agricultural purpose is concerned and ultimately Respondent No.1 District Collector as per the order dated 10-16/3/2000 granted permission for converting the land admeasuring 2696 sq. mtrs for non-agricultural purpose. However, so far as the land admeasuring 155 sq. mtrs. is concerned, the permission for N.A. purpose is not granted and it is under these circumstances the petitioner has approached this Court by preferring this petition.

5. Mr.R.N.Shah, learned Counsel appearing for the petitioner submitted that as such the permission was not granted for 155 sq. mtrs. on the ground that High-Tension Power Line of G.E.B. was passing through the land in question and he further submitted that the situation and the location of the said area which was falling below High-Tension Power Line was such that it is very difficult for the petitioner to fully develop the land if the permission is not granted for whole of the area and the area of 155 sq. mtrs. is excluded. Mr.Shah also submitted that pending the petition, the petitioner applied to G.E.B. for shifting the High-Tension Power Line and required payment was also made to the G.E.B. for the said purpose and huge expenses were incurred by the petitioner for shifting the High-Tension Power Line and now the High-Tension Power Line is shifted and as on today there is no High-Tension Power Line passing through the land of the petitioner and, therefore, now the matter can be considered for grant of permission for N.A. purpose for the land admeasuring 155 sq. mtrs. He submitted that this Court may consider the matter accordingly.

6. On behalf of respondent No.2/1 and 2/5 it has been submitted by Mr.Raval for Mr.Bhatt that for challenging the order passed by the District Collector granting permission for non-agricultural purpose Respondent No.2 has preferred revision being Revision Application No.7/2000 before the State Government and he submitted that as per the order dated 20.6.2000, the stay order has been granted and he further submitted that the revision as on today is pending before the State Government.

7. Mr.Shah learned Counsel appearing for the petitioner, under the instructions of his client, made a statement at the bar that the stay order which was granted initially is subsequently vacated and as on today there is no stay order.

8. In view of the aforesaid, it appears that respondent No.2 is asserting the right over the property in respect of which the civil suit is filed and this Court as per the order dated 6.12.1999 directed for considering the matter for N.A. purpose by ignoring the aspects that the civil suit is pending. It appears that the same was in view of the fact that no injunction was granted for the land in question and the petitioner had paid the full amount which was decided by the State Government for the allotment of the land under Section 23 of the ULC Act. Even before the Secretary of the State Government in the revision which has been preferred, the request appears to have been made that the electric high-tension power line is passing over the land in question and, therefore, the State Government in its order dated 20-6-2000 in revision No.7/2000 has expressly mentioned the said aspect and the prohibitory order for construction is granted over the area only. As it has been submitted on behalf of the petitioner that pending the petition the line of High-Tension Power is shifted and no High-Tension Power Line is now passing through the land for which permission is not granted i.e. 155 sq. mtrs. and, therefore, it would be just and proper if respondent No.1 reconsiders the matter after verification that the High-Tension Power Line is shifted and the matter can be considered for the purpose of granting permission for N.A. purpose in accordance with law, if there is no prohibitory order of any competent forum known to law or if the High-Tension Power Line is already shifted and there is as such no hindrance in utilization of the land for N.A. purpose.

9. In view of the aforesaid I find that the following directions deserve to be issued:

9.1) Respondent No.1, District Collector, Vadodara shall reconsider the matter for grant of permission for non-agricultural purpose for the land admeasuring 155 sq. mtrs., of Survey No.604/2 (Final Plot No.182) and shall consider the matter in light of the observations made by this Court hereinabove and shall take decision in accordance with law as early as possible within a period of three months from the date of receipt of the writ of this Court, after giving

opportunity of hearing to the concerned persons.

10. It is made clear that the order passed by this Court and the directions given hereinabove shall not prejudice the rights of either party in the proceedings of revision application No.7/2000, which is pending before the State Government.

11. The petition is partly allowed to the aforesaid extent. Rule made absolute accordingly. There shall be no order as to costs.

7-10-2004 (Jayant Patel, J.)

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